

INFORMATION LETTER

NATIONAL CANNERS ASSOCIATION

Not for
Publication

For Members
Only

No. 1543

Washington, D. C.

July 2, 1955

Limited Fisheries Exemption To Be Enforced by Labor Dept.

The Wage and Hour Division of the Department of Labor has indicated informally that it will shortly resume enforcement activities in the area of the fish canning exemption to bring the industry into compliance with a recent Court of Appeals decision limiting the scope of the 13(b)(4) overtime exemption.

Under Section 13(a)(5) of the Fair Labor Standards Act, a complete exemption from both minimum wage and overtime is made available to employees "employed in . . . packing, . . . processing (other than canning), marketing, freezing, curing, storing, or distributing" any type of seafood or products thereof. The "other than canning" phrase was added to this section by the 1949 amendments to the Act and, in order to continue the overtime exemption for the exempt fish canning activities, a new 13(b)(4) section was added which accorded a complete overtime exemption for any employee "employed in the canning" of any kind of seafood or its byproduct.

In *Mitchell v. Stinson*, 217 F. 2d 210 (1st Cir. 1954) the Court of Appeals of the First Circuit concluded last December that the exemption from overtime provided in Section 13(b)(4) was available only for those employees engaged in operations physically essential in the canning of fish, such as cutting the fish, placing it in cans, labeling or packing the cans for ship-

(Please turn to page 250)

Home Economics Research

A 15-member Home Economics Research Advisory Committee has been appointed to review the U. S. Department of Agriculture's current research program in home economics and to make recommendations on future research programs.

The committee will review the USDA's current research programs dealing with food and nutrition, textiles and clothing, housing and household equipment, and family economics. First meeting of the committee is scheduled to be held in Washington, D. C., July 11-13.

N.C.A. To Join in Promotion of Supermarket Anniversary

The N.C.A. is one of 10 trade associations and companies sponsoring consumer publicity in connection with the "Silver Jubilee" of the supermarket industry during the month of August.

Marking 25 years of progress through self-service, the "Silver Jubilee" celebration will mean special advertising programs in local newspapers and on local radio and television stations, product advertising campaigns tied in closely with the "Silver Jubilee" theme, special point-of-sale materials, and special recognition on the editorial food pages of newspapers and on women's radio and television shows.

The Super Market Silver Jubilee Committee chose Dudley-Anderson-Yutzy to undertake the consumer publicity project on a voluntary basis for the food industries which they represent. As a result, the N.C.A. is one of the sponsors of consumer publicity.

In anticipation of the desire of many metropolitan area newspapers to run special food editorial sections or extra food pages during August when local and national food advertising is likely to be heavy, a special "Silver Jubilee" kit of press releases and photographs has been prepared for leading papers in all major markets. The kits will be offered to editors on an exclusive basis and will be distributed well in advance of the celebration. Each kit will include articles on the supermarket industry itself, its history and development as well as the contributions it makes to easier and more pleasant shopping. Each kit also will include articles and photos on basic foods, and each article will be tied in to the "Silver Jubilee" theme.

Canned foods will be represented in these publicity kits through a series of 12 articles and photos dealing with the canning industry story in four basic areas: field, cannery, retail store, and home. Following are the titles:

Field: "Canning Makes Harvest Time a Year-round Affair," "When

(Please turn to page 249)

Hearings on Minimum Wage

The House Labor Committee on June 30 concluded public hearings on proposals to increase the statutory minimum wage. The Committee had excluded testimony regarding coverage.

No date has been set for the start of executive sessions at which the Committee will decide the level of the minimum wage it will recommend to the House. Such consideration may be expected to begin as soon as the transcript of testimony has been printed, probably by the week of July 11.

Antitrust Legislation Cleared for President

Two antitrust bills, one increasing the criminal penalties under the Sherman Act and the other amending the Clayton Act to grant a right of action to the United States to recover damages under the antitrust laws and to establish a uniform statute of limitations for private treble-damage suits, were cleared for the President last week by Senate passage.

H. R. 3659 proposes to increase from \$5,000 to \$50,000 the maximum criminal penalties which may be imposed for violations of Sections 1, 2 and 3 of the Sherman Act, the basic antitrust statute. The existing \$5,000 maximum fine has remained unchanged since the passage of the Sherman Act in 1890. No change is proposed in the Act with respect to the penalty of imprisonment which may be imposed independently of or in addition to the maximum fine.

Under the Congressionally approved bill, either the recommended \$50,000 maximum fine or the imprisonment for up to one year may be imposed for each count on which the defendant is convicted of a Sherman Act violation. The proposed legislation has the approval of the Attorney General and White House approval may be anticipated.

H. R. 4954, also approved by the Senate on June 24, has a dual purpose. Under the decisions of the Su-

(Please turn to page 249)

Canned Foods for VA

The Veterans Administration has invited sealed bids to furnish the following:

Peas, complying with Federal Specification PP-F-351b and Interim Amendment No. 1, Type I, Kadota, Choice (Grade B), f.o.b. origin or destination: 5,395 dozen No. 10 cans, packed in heavy syrup; and 5,350 dozen No. 303 cans, packed in water; or equivalent in other size cans. Bids due under S-8 by July 18.

Tuna, complying with Federal Specification PP-T-771 and Amendment 1, with an amendment, fancy grade, 1 lb. or 1,000 pack; 1,500 dozen No. 1 cans or 2,000 No. 2½ cans. Bids due under S-8 by July 19.

Green Peas for Processing

The 1955 indicated production of green peas for processing is 430,910 tons, according to the Crop Reporting Board of USDA. This estimate, which is based on conditions as of June 15, is 8 percent above the 1954 production of 398,400 tons but 2 percent less than the 1944-53 average of 438,250 tons.

The preliminary estimate of acreage for harvest in 1955 is 434,700 acres. This compares with 424,520 acres harvested in 1954 and an average of 430,340 for the 10-year period. In arriving at the estimate of acreage for harvest in 1955, allowance was made for abandonment and diversion of acreage to dry or seed peas about in line with the average for recent years.

The indicated 1955 yield per acre for the United States, based on June 15 conditions, is 1,983 pounds per acre. This compares with 1,877 pounds obtained in 1954 and an average of 2,080 pounds for the 1944-53 period.

Following is the indicated production by states, as of June 15 and as reported June 24:

State	10-year	1954	1955	Per-
	ave.	Re-	Indi-	cent
	1944-53	vised	estated	change
(tons, shelled)				
			1954	
Maine	5,780	6,760	6,840	+1
New York	27,030	14,960	19,000	+27
Pennsylvania	17,060	13,120	13,230	+1
Ohio	2,930	980	1,360	+39
Indiana	3,740	1,580	2,380	+51
Illinois	23,610	27,170	32,200	+19
Michigan	8,860	3,380	4,720	+40
Wisconsin	133,170	115,100	131,250	+14
Minnesota	41,370	48,720	46,400	-5
Iowa	3,610	2,610	4,000	+53
Delaware	2,270	4,000	5,320	+31
Maryland	10,240	10,100	11,160	+10
Virginia	1,720	2,100	3,120	+49
Idaho	9,180	11,720	10,000	-15
Colorado	3,620	460	2,250	+389
Utah	15,960	5,600	9,100	+61
Washington	62,270	70,910	63,000	-11
Oregon	51,130	43,150	44,000	+2
California	8,070	9,380	14,700	+67
Other states ¹	9,500	6,420	6,580	+7
U.S. Total	438,250	398,400	430,910	+8

¹ Ark., Ga., Kans., Mo., Mont., Nebr., N. J., Okla., Tenn., W. Va., and Wyo.

Snap Beans for Processing

A total of 141,610 acres of snap beans will be planted for processing in 1955, according to a preliminary estimate by the Crop Reporting Board of USDA. This is about 11 percent less than the 158,470 acres planted last year but 8 percent more than the average of 131,260 acres for the 1944-53 period.

If abandonment of planted acreage amounts to 4 percent, in line with recent years, about 136,000 acres will be harvested this year. This compares with 151,500 acres harvested in 1954 and the average of 125,410 acres.

Of the total 1955 planted acreage, it is estimated that 122,510 acres are green varieties, compared with 133,560 acres last year; and 19,100 acres are wax varieties, compared with 24,910 acres last year.

Following are planted acreage figures by states, based on reports to USDA as of June 15:

State	Green		Wax	
	1954	1955	1954	1955
Maine	650	870	1,550	1,430
New York	27,760	26,950	11,340	8,650
Pennsylvania	4,770	2,740	1,430	960
Michigan	6,160	4,500	1,940	1,200
Wisconsin	10,720	10,230	5,780	5,270
Missouri	260	100	—	—
Delaware	2,400	2,600	50	—
Maryland	12,310	11,330	700	470
Virginia	4,000	3,800	—	—
North Carolina	3,100	2,900	—	—
South Carolina	500	400	—	—
Georgia	200	—	—	—
Florida	14,600	11,200	—	—
Tennessee	7,600	6,500	—	—
Mississippi	1,400	1,200	—	—
Arkansas	3,600	4,000	—	—
Louisiana	1,150	1,800	—	—
Oklahoma	1,670	2,400	30	—
Texas	7,000	7,000	—	—
Colorado	1,380	1,300	320	200
Utah	550	570	50	30
Washington	2,940	2,280	260	20
Oregon	8,930	9,600	670	500
California	3,200	2,800	—	—
Other states ¹	6,470	6,440	700	370
U.S. Total	133,560	122,510	24,860	19,100

¹ Ala., Idaho, Ill., Ind., Iowa, Ky., Minn., Nebr., N. H., N. J., N. Mex., Ohio, Vt., and Wyo.

Sweet Corn for Processing

The 1955 acreage of sweet corn planted or to be planted for canning or freezing is reported at 418,850 acres by the Crop Reporting Board of USDA. This preliminary estimate is about 14 percent less than the 484,910 acres planted last year and 17 percent less than the 1944-53 average of 500,240 acres.

The acreage intended for freezing is 25 percent less than last year,

while the acreage intended for canning and other processing is down 12 percent, according to the report.

If abandonment of planted acreage amounts to 7 percent, in line with recent years, there will be about 389,500 acres for harvest in 1955. This compares with the revised estimate of 453,910 acres harvested in 1954 and the 10-year average of 466,950 acres.

Plantings of Bantam and other yellow varieties in 1955 are expected to total 374,020 acres, compared with 432,970 acres last year. Plantings of Country Gentleman are expected to total 30,710 acres, compared with 40,660 acres last year; Evergreen and narrow grain 10,470 acres, compared with 8,690 acres last year; and other white varieties 3,650 acres, compared with 2,590 acres last year.

State	10-year	1954	1955	Per-
	ave.	Re-	Re-	cent
	1944-53	vised	vised	change
Maine	11,000	5,500	3,900	-29
New Hampshire	400	500	420	-16
Vermont	800	700	700	0
New York	27,710	22,600	18,100	-20
Pennsylvania	12,490	13,000	13,000	0
Ohio	18,420	8,400	7,800	-7
Indiana	35,480	24,500	22,500	-8
Illinois	67,730	65,000	57,800	-11
Wisconsin	103,680	108,000	98,300	-9
Minnesota	86,500	99,300	92,800	-7
Iowa	36,570	28,700	20,600	-28
Delaware	4,550	6,400	5,300	-19
Maryland	38,810	36,800	30,000	-18
Virginia	800	1,200	1,200	0
Idaho	9,230	11,300	8,500	-25
Utah	4,950	6,500	4,600	-29
Washington	13,550	17,700	9,600	-46
Oregon	11,570	15,600	12,500	-20
Other states ¹	15,780	12,710	11,330	-11
U. S. Total	500,240	484,910	418,850	-13.6

For canning and other processing², 453,540 417,940 368,720 -12

For freezing³, 74,370 66,970 50,130 -25

¹ Ark., Calif., Colo., Mich., Mont., Nebr., N. J., Okla., S. D., Tenn., Texas, and Wyo. ² Not shown by states to avoid disclosure of individual operations.

Green and Wax Bean Stocks

A report on canners' stocks and shipments of canned green and wax beans has been issued by the N.C.A. Division of Statistics. The reports on this commodity now include figures summarizing the pack on a month-by-month basis.

	1953-54	1954-55
	(actual cases)	
Carryover, July 1	331,859	2,269,419
Pack to Dec. 31	23,896,816	28,773,327
Pack, Jan. 1-June 1	n.s.	1,089,270
Total supply	24,228,675	32,132,016
Stocks, June 1	2,853,788	6,046,045
Shipments during May	324,068	1,890,783
Shipments, July 1-June 1	21,374,887	26,085,971

n.s.—not available.

Wholesale Distributors' Stocks of Canned Foods

A report on stocks of 18 canned foods in the hands of wholesale distributors has been issued by the Bureau of the Census, U. S. Department of Commerce.

Vegetables—All six of the vegetables covered in this report showed seasonal decreases of 4 to 13 percent below April 1 stocks. Corn, the largest volume item with June 1 stocks of 4.5 million actual cases, was off only 4 percent from April 1, while peas, at 3.3 million cases, and sauerkraut, at 691,000 cases, were reduced 13 percent. June 1 stocks of green and wax beans amounted to 3.2 million cases, a decrease of 6 percent from April 1. In the same period, stocks of tomatoes (3.1 million) and tomato catsup and chili sauce (1.9 million) decreased 12 and 11 percent, respectively. Sauerkraut stocks were not measured in this survey last June. Of the five other vegetables covered, four indicated stocks 7 to 22 percent higher than a year ago. Only peas, off 8 percent, were below June 1, 1954, stocks.

Fruit—Distributor stocks of the seven canned fruits covered in this report totaled 10.0 million actual cases on June 1—177,000 cases (2 percent) below April 1 stocks, but 421,000 cases (4 percent) more than on hand a year ago. Increases over April 1 stocks reported for fruit cocktail (16 percent), pears (4 percent), and pineapples (1 percent) were more than offset by decreases shown by red pitted cherries (19 percent), apricots (18 percent), applesauce (8 percent), and peaches (5 percent). Compared with stocks on hand a year ago, only two items indicated reductions—apricots (15 percent) and red pitted cherries (3 percent). All other items were at somewhat higher stock levels, with fruit cocktail, up 14 percent, showing the largest increase over June 1, 1954, stocks.

Juices—June 1 distributor stocks of all canned juices were below their April 1 level and, with one exception, also were below stocks on hand a year ago. Pineapple juice, with stocks at 1.2 million actual cases, reflected the only increase (1 percent) over June 1, 1954, and the smallest decline (1 percent) from April 1, 1955, stocks. The citrus juices (orange, grapefruit, citrus blends) showed the sharpest reductions from April 1 (9 to 11 percent) as well as below last June (14 to 19 percent). Tomato juice, with June 1 stocks of 2.5 million cases,

was down 7 percent from April 1 and 3 percent below last year's stocks.

Commodity	June 1, 1954	April 1, 1955	June 1, 1955
(Thousands of actual cases)			
Vegetables:			
Beans, green and wax	2,600	3,450	3,348
Corn	4,221	4,096	4,517
Peas	3,610	3,831	3,329
Sauerkraut	n.a.	703	691
Tomatoes	2,847	3,583	3,188
Catsup and chili sauce	1,663	2,147	1,915
Fruits:			
Applesauce	1,200	1,381	1,272
Apricots	635	642	542
Cherries, RSP	481	576	466
Fruit cocktail	1,436	1,422	1,644
Peaches	2,799	3,102	2,947
Pears	1,101	1,121	1,169
Pineapple	1,919	1,925	1,952
Juices:			
Citrus blends	681	615	550
Grapefruit	1,397	1,296	1,130
Orange	1,822	1,756	1,566
Pineapple	1,155	1,173	1,164
Tomato ^b	2,568	2,687	2,495

n.a.—not available. * Includes fruits for salad and mixed fruits (except citrus). ^b Includes vegetable juice combinations containing at least 70 percent tomato juice.

New Association Members

The following firms have been admitted into membership in the N.C.A. since May 14, 1955:

LOOK CANNING COMPANY, A. M., R.F.D., East Machias, Maine. Products—Fish spreads, crab meat, lobster, sardines. Officer—Anthony M. Look, owner.

MOORE CANNING CO., L. H., P. O. Box 1711, McAllen, Texas. Products—Green beans, black eye peas, tomatoes, carrots. Officer—Lewis H. Moore, president.

Antitrust Legislation

(Concluded from page 247)

preme Court, the United States is excluded as a "person" who may sue for the recovery of treble damages in private suits for violation of the antitrust laws. The bill would amend the Clayton Act so as to allow the United States, as the largest single purchaser of goods and services from private corporations, to recover actual damages for injuries to its business or property arising out of violations of the antitrust laws. The government, as distinct from a private party, will not be authorized to recover treble damages.

H. R. 4954 also amends the Clayton Act to provide a uniform statute of limitations of four years for actions to recover damages brought either by the United States or by private par-

ties. Under existing law, the period of limitations is determined by the law of the forum, with the result that private antitrust actions are subject to varying periods of limitation under state statutes.

The bill would provide for a uniform four-year limitation period except during the pendency of suits brought by the United States to punish or restrain violations of antitrust laws. In such instances, the private treble damage plaintiff must bring his suit either within four years after the cause of action has accrued or within one year after the government's case has been concluded, which ever allows for the longer period of time.

H. R. 4954 also follows the recommendations of the Attorney General.

Supermarket Anniversary

(Concluded from page 247)

You Buy Canned Food, You Buy a Can of Research as Well," "Future Prospects Bright for Canned Foods."

Cannery: "Successful Canning Depends on Science," "Canning Seals in Flavor, Food Value," "Canning Gives Foods a Lifetime Guarantee."

Store: "Canned Foods from Everywhere Provide Endless Menu Variety," "Every Size of Canned Foods to Suit Every Need," "Canned Foods Department Important to Supermarkets."

Home: "Whole Family Eats Better because of Canned Foods," "Glamorize Your Cooking with Canned Foods," "Choose Canned Foods—Eat Pleasantly Outdoors."

In addition to the newspaper kits, special canned foods coverage of the "Silver Jubilee" celebration will be included in DAY's television script service supplied to 242 food program telecasters across the country and in radio script services supplied to 434 women's program radio broadcasters. The total audience reached by food experts in the combined media—newspapers, television, and radio—to be covered is 65 million consumers.

It is expected that N.C.A.'s support and participation in this August food retailing event will be of interest to canners' salesmen and brokers when calling on the trade. In announcing N.C.A.'s part in the promotion, Executive Secretary Carlos Campbell suggested that all canned foods sales representatives point out to their supermarket customers the support of the canning industry in this national merchandising event.

Status of Legislation

Wage-hour legislation—S. 2168, increasing the statutory minimum wage to \$1 an hour, was passed by Senate June 8. House Labor Committee concluded public hearings June 30 (see story, page 247).

Price supports—H. R. 12, restoring price supports on basic crops at 90 percent of parity, was passed by House May 5. Senate Agriculture Committee continued public hearings on price support legislation.

Apple prices—H. R. 5188, to prohibit publication by the USDA of any prediction with respect to apple prices, was passed by House June 7 and by Senate June 17 and cleared for the President.

Mexican farm labor program—H. R. 3822, to authorize continued importation of Mexican nationals for employment in agriculture, was reported, with amendments, by the House Agriculture Committee May 24. Bill is awaiting House consideration under a rule granted by the Rules Committee.

Sugar—Revision of the Sugar Act is the subject of public hearings begun by the House Agriculture Committee June 22. No action scheduled by Senate Finance Committee.

Trip-leasing—S. 898, to prohibit ICC regulation of the duration of motor carrier leases, was the subject of public hearings by the Senate Commerce Subcommittee on Surface Transportation June 20-23.

Renegotiation—H. R. 4904, providing a two-year extension of the Renegotiation Act of 1951, was passed by House April 28 and by Senate June 21, with amendments, and sent to conference June 27.

Small Business Act—S. 2127, providing a two-year extension of the Small Business Administration, and increasing the maximum permissible loan from \$150,000 to \$250,000, was passed by Senate June 6. House Banking Committee continued public hearings.

FDA codification—H. R. 6991, to revise, codify, and enact into law Title 21 of the U. S. Code, entitled "Food, Drugs, and Cosmetics," was reported by the House Judiciary Committee June 23.

Philippine Trade Act—H. R. 6050 was approved by House Ways and Means Committee, with an amendment, June 20, and was cleared by the Rules Committee June 28 for House consideration under a closed rule.

Customs simplification—H. R. 6040 was passed by the House June 22. Senate Finance Committee will open public hearings July 6.

Hells Canyon Dam—S. 1333, to authorize construction, maintenance and operation of Hells Canyon Dam, was approved by Senate Interior Subcommittee June 8 and is scheduled for further consideration by the full Committee next week.

Antitrust suits—H. R. 4954, providing a uniform statute of limitations for antitrust cases, was passed by House April 26 and by the Senate June 24, and cleared for the President (see story, page 247).

Antitrust penalties—H. R. 3659, to increase maximum penalties under the Sherman Act, was passed by House March 29 and by the Senate June 24, and cleared for the President (see story, page 247).

Water pollution—S. 890, extending and amending the Water Pollution Control Act, was passed by Senate June 17.

Limited Fisheries Exemption

(Concluded from page 247)

ment, or other activities which could be said to be directly a part of the cannery process. The decision denied the availability of the fish cannery overtime exemption to firemen-watchmen when their activities were not directly related to actual cannery line operations, to all dead season employees, to office employees maintaining employment, payroll, and shipping records and to bus drivers employed

by a sardine cannery in transporting employees to and from work.

The *Stinson* decision is in conflict with an earlier decision of the Court of Appeals of the Third Circuit, *McComb v. Consolidated Fisheries*, 174 F. 2d 74 (3rd Cir. 1949) which allowed the full exemption to all employees of a fish cannery who were engaged in activities closely related to or directly essential to the canning of fish even though they were not part of the actual cannery operation. In the latter case, which was decided before the 1949 amendments eliminated the minimum wage exemption for employees employed in fish canning, the Court allowed both the minimum wage and overtime exemption to a night watchman, a cook, an office employee, and to carpenters and maintenance men employed between fishing seasons.

The recent informal announcement by the Wage and Hour Division is an indication that the Division will no longer consider the *McComb v. Consolidated Fisheries* case as controlling and that their enforcement position in the future will be based on the principles declared in the *Stinson* case. The Division will therefore not consider the exemption available to night watchmen, to firemen employed during periods other than when the actual processing operations are taking place, to maintenance and repair employees during the dead season or during periods when the processing lines are not in operation, to office employees whether or not their records relate to employment and shipping activities, and to bus drivers employed in transporting employees to and from work.

TABLE OF CONTENTS

	PAGE		PAGE
Congress		Management	
Hearings on minimum wage	247	New association members	249
Antitrust legislation cleared for	247	Procurement	
President	247	Canned foods for VA	248
Status of legislation	250	Research	
		Home economics research	247
Consumer and Trade Relations		Statistics	
N.C.A. to join in promotion of	247	Green peas for processing	248
supermarket anniversary	247	Snap beans for processing	248
		Sweet Corn for processing	248
Labor		Green and wax bean stocks	248
Limited fisheries exemption to be	247	Wholesale distributors' stocks of	249
enforced by labor dept.	247	canned foods	